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5 August 1997

Comments on Mass Media Docket 97-138  
Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

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### **Introduction**

These comments are filed by Harold Hallikainen. Over the past ten years I have had the opportunity to research FCC Rules and policies. This research has resulted in an ongoing series of articles for Radio World Newspaper and books for the National Association of Broadcasters. Radio World is about to publish articles on this NPRM and the history of the main studio rule. A pre-publication copy of those articles is attached for reference.

As described in the attached articles, the main studio rule is almost as old as radio. At first the concern was that radio stations would only be constructed to serve large cities. Later, once stations were licensed to specific communities, the concern became that licensees would abandon the licensed community, often directing its programming to meet the needs of a larger nearby community. The FCC has adopted and dropped various policies, such as the Suburban Community Policy and the Berwick Doctrine, to deal with licensees that propose to serve a licensed community, then serve another. Finally, there is much to the main studio rule that is not actually in the text of the rule.

### **Studio Location Requirement Relaxation**

I believe that if we relax the main studio rule to allow the main studio to be located outside the area where the station has a substantial number of listeners, it is unlikely that the station will "serve as a medium of local self expression" (a purpose of the main studio rule as explained in 43 FCC 570 (1950)). Further, a studio located outside the listening area is unlikely to be "one which by its nature, and to a certain degree the amount, of programming originating therefrom tends to establish the station, in the eyes of the community, as one serving its particular needs and interests." [25 FCC 837 (1950), granting a waiver of the local origination requirement to KXTC]. Should the Commission decide that the changes in the broadcasting industry and FCC policies (more use of the market instead of regulation) make relaxation of the main studio rule desirable, I would suggest elimination of the rule instead of establishing some arbitrary limit on main studio location (such as the proposed fixed distance limit or contour of other station limit, neither of which take into account the audience of the particular station).

### **Public Inspection File Location**

When the current rules were adopted, the Commission set different accessibility requirements for the main studio and the Public Inspection File. The main studio could be outside the community of license while the Public Inspection File could not. I believe that one "level of accessibility" should serve both purposes: All stations should be allowed to keep their Public Inspection File at the main studio, wherever that may be.

### **Public Inspection File Contents and Retention Period**

I look forward to the FCC updating these requirements.

### **Electronic Public Inspection File**

While not suggesting a requirement be imposed on stations, I do support the idea of stations placing their Public Inspection Files on the World Wide Web. Many members of the listening public could then access the files at home at any time of the day or night. Others could access the files through computers in public libraries throughout the coverage area of the station.

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and beyond. Finally, others could also access the file through a computer at the station's main studio. While not requesting any rule requiring stations to put their Public Inspection Files on the web, I would encourage stations that do to provide a link to the file from their home page instead of burying it somewhere.

#### **Case Law**

Case law has substantially expanded the requirements of the main studio rule over the requirements that are in the Code of Federal Regulations. It is quite likely that a licensee relying upon the plain meaning of the rule could be found in violation of it. I would suggest that any requirements of the rule be spelled out in the rule.

In response to petitions for reconsideration and/or clarification filed in response to the adoption of the current rules, the Commission defined a main studio as one "which has the capability adequately to meet its functions... of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous transmission capability, and maintain a meaningful management and staff presence." "The term 'main studio' continues to designate a broadcast stations only studio when no auxiliary studio is maintained."

Later, the Commission defined a "meaningful management and staff presence" as full-time managerial and full-time staff personnel. [6 FCC Rcd 3615 (1991)]. The Commission later detailed who would be considered management.

It *appears* that all these requirements are designed to differentiate between a main studio and an auxiliary studio. From 53 FR 32889 (1988) and 3 FCC Rcd 5024 (1988), it appears that staffing requirements would not apply to a small station with only one studio. This is further explained in footnote 11 of 7 FCC Rcd 6800 (1992) ("Unlike WRSF, stations of this size will generally not have more than one studio. In such circumstances where the employees report to work to the main studio, we have no intention of limiting their ability to leave the studio to conduct station business."). Footnote 10 of this NPRM states that under the current rule, each station must maintain a full-time management and staff presence during business hours. Further, FCC staff has stated that even though the FCC has adopted rules allowing the unattended operation of broadcast transmitters, a full-time management and staff presence must be maintained at the main studio. These statements seem to conflict with the above mentioned footnote 11.

The current rule (and the proposed rule) are inadequate in that each states that a station must maintain a main studio at some location but does not define "main studio." If the main studio rule is to be maintained, it should include a definition of all requirements on a main studio. If the Commission wishes to enforce program origination capabilities and staffing levels, these should be clearly stated in the rules. Case law has demonstrated that the existing rule is inadequate.

Sincerely,



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# Main Studio Rule - Revisited

## Radio World -

*by Harold Hallikainen*

**San Luis Obispo, CA** - On May 28, 1997, the FCC adopted a Notice of Proposed Rule Making [MM Docket No. 97-138 (text, WP)]. This proposed rule making deals with a rule that, in some form, has existed since 1939 and is based Section 9 of the Radio Act of 1927, which provided for the "fair, efficient, and equitable distribution of radio services." Congress was concerned about the large number of stations in the immediate vicinity of large cities limiting the possibility of local radio service in smaller cities (see remarks of Representative White, 67 Cong Rec 5479 (1926)).

### The Proposal

Currently, radio and television stations are required to have a main studio located within the station's *principal community contour*, defined as the 5 mV/m contour for AM stations and the 70 dBu contour for FM stations. [47 CFR 73.1125] Further, stations are currently required to keep a Public Inspection File available *within* the city of license. [47 CFR 73.3526(d)].

Apex Associates, and others, have filed a petition with the FCC seeking to modify the main studio rule to allow the main studio to be at any location which the licensee deems "reasonably accessible" to its community of license. Other petitions request that the rules be modified to allow the Public Inspection File be located at the main studio, wherever it is located. Finally, one other petition suggested modifying the rules requiring a station buyer to be responsible for documents in the Public Inspection File that were to be maintained by the seller.

In paragraph 8 of the NPRM, the FCC points out that since the main studio rule was last revised in 1987, Congress passed the Telecommunications Act of 1996, which substantially increased the number of stations one licensee may own in a "market." For example, in a market with 45 or more commercial stations, a single licensee may own up to 8 commercial stations (not more than five of which may be in the same service (AM or FM)). The FCC recognizes that a single licensee may own several stations in a single market yet there could be no area where all stations are within the principal community contour. This unnecessarily (according to the petitioners) requires the licensee to have multiple studios within the market. It is argued that the substantial expense of maintaining these studios provides little, if any, public benefit. These expenses "deprive it [the

licensee] of savings that could be put to more productive use for the benefit of the community served by the station." It is interesting to note that almost any time a change that would save a licensee money is proposed, those savings would go to better service to the community. Is this indeed the case?

In paragraph 9 of the NPRM, the FCC states that the main studio rule may place additional burden on smaller stations due to the smaller area in which they are allowed to place their main studio (due to the smaller coverage area). High power stations may have a principal community contour with 70 or 80 miles in diameter, while lower power stations may have a contour only 20 miles in diameter.

In paragraph 10, the FCC points out that a location outside the principal community contour may be easier for the public to access than some points within the principal community contour due to the transportation infrastructure (commuting patterns, access to public transportation, major highways, public parking and maybe even bike lanes).

With this reasoning in mind, Apex proposed the studio be located where reasonably accessible (as defined by the licensee), or "within 30 minutes normal driving time." The FCC did not favor this approach due to its uncertainty.

Another approach would be to keep the existing contour requirement with the Commission adopting a waiver policy that would take accessibility of a proposed studio location into consideration. Again, due to uncertainty and the paperwork load on the FCC staff, this approach is not favored.

Finally, the FCC proposes a few definitive methods for determining an acceptable main studio location. The first approach would be to use the principal community contour of *any* station licensed to the community in question. This would eliminate the apparent disparity between large and small stations, as far as main studio location is concerned. A second approach would allow the main studio to be anywhere within a certain radius of a common reference point within the community of license. These methods could be combined to allow, for example, a main studio location within the specified radius *or* within the principal community contour of any station licensed to the community, whichever provides greater flexibility. These approaches may, however, place the main studio in an area where the station has few, if any, listeners, since it may be substantially outside the principal community contour of the particular station. I can imagine a class A (or maybe even a class D) station located far from the community of license, but within the contour of a 50 KW directional AM station with substantial antenna gain and on a low frequency.

## Public Inspection File

The FCC also wants the Public Inspection File to be accessible to the public, yet has

already established a different level of accessibility. Currently, the file must be located within the community of license unless another location was authorized prior to July 16, 1987. The petitioners propose that the rules be modified to allow the public inspection file be located at the main studio, wherever located. One petitioner offered increased public access to files at main studios outside the community of license by providing free transportation to the main studio, deliver the file to a location specified by the requestor, or by providing the specified documents by mail. The Commission seems to accept the idea that if indeed the main studio is publicly accessible, then a public inspection file located at that studio is also publicly accessible.

In addition, the FCC realizes the rules regarding the contents of the Public Inspection File are out of date. They propose removing the requirement that the file include the 1974 manual entitled "The Public and Broadcasting." They point out that the manual is long out of date. They would also update references to rules that have been deleted.

As one petitioner pointed out, information on a former licensee (such as ownership, programming, and EEO information) has little relevance to a new licensee and should not need to be in the Public Inspection File. The FCC tends to agree with the exception that non-owner-specific information (for example engineering information on a station's facilities) would continue to be relevant.

The FCC wishes to recognize email as "written comment and suggestions" which would have to be maintained in the Public Inspection File.

The Commission also seeks comment on the retention period of various documents in the file. In general, they suggest, documents should be available to the public for as long as they are useful to the public. For many documents, this is currently the term of the station license. Various options are proposed, including the period of time applications are pending before the FCC or courts. If an action is no longer pending, must a licensee continue to make the documentation available to the public?

Finally, the Commission is also considering allowing the Public Inspection File to be maintained in electronic form instead of on paper. This is similar to the old program log rules which allowed logs to be microfilmed as long as a microfilm reader was available. Here, should a station decide to put its documents in electronic form, a computer terminal would have to be available for public use. In addition, stations would have to print documents on paper in response to public requests. The FCC would "encourage" stations to place their public inspection files on the World Wide Web.

## **Filing Comments**

Comments on this NPRM are due August 8, 1997. Reply comments are due September 8,

1997. The NPRM and other documents cited in this article are available on the World Wide Web (<http://www.broadcast.net/hallikainen/insite94.html>) and via fax (call Hallikainen & Friends from your fax machine at +1 805 541 0201).

## Next Month

Next month, we'll take a detailed look at the *history* of the main studio rule. How did it get there? Is it still needed? Make sure you get a copy of the NPRM and file your well reasoned comments. 'til next month, stay tuned!

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# Main Studio Rule - The History

## Radio World -

*by Harold Hallikainen*

**San Luis Obispo, CA** - Last month we looked at the Notice of Proposed Rulemaking proposing to revise the location requirements for the main studio and the public inspection file. Documents cited in this article are available on the World Wide Web at <http://www.broadcast.net/hallikainen/insite95.html> or by fax from Hallikainen & Friends at +1 805 541 0201. In addition, once comments are available from the FCC, they should be available from these two sources. Comments on the NPRM are due August 8, 1997. Reply comments are due September 8, 1997. The main studio rule has an interesting history. Let's reminisce!

## Radio Act of 1927

In 1926, Congress was concerned that there was "an unjustifiable grouping of stations within limited areas. There are within 50 miles of Chicago, 40 stations; of New York, 38; of Philadelphia, 22; of San Francisco, 22." [67 Cong. Rec. 5479 (1926)] To dilute this concentration of radio stations in and around large cities, Congress enacted Section 9 of the Radio Act of 1927, which provided that "the licensing authority shall make such a distribution of licenses, bands of frequency of wavelengths, periods of time for operations, and of power among the different States and communities as to give fair, efficient, and equitable radio service to each of the same." It was proposed that each state have allocated to it a certain quota of frequencies (68 Cong. Rec. 2557 (1927)), but instead the Federal Radio Commission was directed to allocate frequencies among five zones, each consisting of several states, based on population. In 1934, Section 9 of the Radio Act was reenacted into the Communications Act of 1934 as section 307(b). In 1936 the five zone scheme was discarded. To this day, the FCC makes section 307(b) determinations in making TV and FM channel assignments to specific communities and in the construction permit process for AM stations.

In 1939, the FCC adopted rules defining the main studio as "the studio from which the majority of its local programs originate, and/or from which a majority of its station announcements are made of programs originating at remote points." Section 3.30(a) stated that "Each standard broadcast station shall be considered located in the state and city where the main studio is located." Section 3.31 required FCC approval to move the main studio outside the city or town "where the station is located." [4 FR 2714 (1939)] This is very similar to the current rule!

By 1948, the FCC found that stations were abandoning the communities they were licensed to serve. "Under the Commission's present rules and regulations defining the term "main studio" it is possible for a broadcast station to originate most of its local programs from a place other than the city in which their main studio is located by the device of broadcasting a majority of its station announcements from a studio in the city for which the station is licensed. In the Commission's opinion in determining the location of a station, consideration should be given to the place where programs originate and not station announcements. Accordingly it is proposed to amend the Commission's rules and regulations to accomplish this result." [13 FR 1129 (1948)] The Commission proposed a rule stating "Each standard (or FM) broadcast station shall be considered to be located in the city and state where its main studio is located as shown on its license. A majority of the station's non-network programs (computed on the basis of the amount of time consumed by such programs and not on the number of such programs) shall originate from such main studio or from other studios or remote points situated in the city in which the station is located." A Report and Order adopting the main studio rule was adopted in 1950. [43 FCC 570 (1950), 15 FR 8992 (1950)] Under the new rule, stations were required to originate 2/3 of their non-network programming or 50% of their total programming (whichever is less) from their main studio, which was to be located in the community to which the station was licensed *or* at the station's transmitter site (in 1950, remote control was only authorized for class D (10 watt) non-commercial educational stations). The new rules recognized that some communities stations were licensed to were too small to support a station. In such cases, the FCC would authorize licensing one station to more than one community. These stations were to originate programming in each of these communities, and all programming originating in each of these communities counted toward the local origination requirement.

The comments filed in the 1950 rulemaking establishing the main studio rule are interesting. Some argued that the main studio rule was contrary to the FCC's policy that a station is expected to provide service to all of the people within its service area and not simply to a portion of those persons (within the licensed community). Others argued that regulating where a licensee originates programming "would have the same practical effect as to regulate the program content in advance of its actual broadcast" in violation of section 326 of the Communications Act of 1934. The Commission commented that "We have consistently held that the term "radio service" as used in section 307(b) comprehends both transmission and reception service. Transmission service is the opportunity which a radio station provides for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community. Reception service, on the other hand, is merely the presence in any area of a listenable radio signal. It is the location of the studio rather than the transmitter which is of particular significance in connection with transmission service. A station often provides service to areas at a considerable distance from its transmitter, but a station cannot serve



as a medium for local self expression unless it provides a reasonably accessible studio for the origin of local programs." "It is apparent that section 307(b) and the Commission's efforts to apply it may be largely frustrated if, after a station is licensed for the purpose of providing both reception and transmission service to a particular community, it removes its main studio to a distant point and originates all or substantially all of its programs in a city or town other than that which it was licensed to serve." A copy of the then new main studio rules is found in section 3.30 in 18 FR 3840 (1953) and 20 FR 9046 (1955).

## Suburban Community Policy

The FCC adopted the Suburban Community Policy in 1965. [2 FCC 2d 190]. This policy was expanded by the Berwick policy to cover FM and TV in 1968. [12 FCC 2d 8 (1968), 12 FCC 2d (Rev. Bd. 1969), 20 FCC 2d 393 (1969), 40 FCC 2d 548 (Rev. Bd. (1973), 93 FCC 2d 436, 456 [53 RR 2d 681] (1983)]

These policies attempted to determine the actual intent of the applicant for a new station. An applicant for a new station proposing to serve a suburb of a large community would have a 307(b) preference over one proposing to serve the large community, often gaining the license for the new station. Once granted, however, these licensess's might "abandon" the licensed community and direct their programming towards the larger community, frustrating the purpose of the preference. The Suburban Community Policy stated that where an applicant's proposed 5 mV/m daytime contour would penetrate the geographic boundaries of any community with a population of over 50,000 persons and having at least twice the population of the applicant's specified community, a presumption arises that the applicant realistically proposed to serve the larger community rather than the specified community. The Berwick Doctrine expands these concepts to include FM stations. Finally, *de facto reallocation* is defined as an attempt to utilize a channel assigned to one community in order to establish a broadcast service in another community, thereby depriving the assigned community of service from that channel.

These policies were reviewed in 1983. [93 FCC 2d 436 (1983)] Those commenting in favor of retaining the policies included a familiar name: Edward O. Fritts. They stated that elimination of the policies would hurt smaller communities since stations licensed to those communities would direct their service to a nearby larger community, ignoring the needs of the smaller community to which the station is licensed. Others commented that the policies actually prevented the establishment of new stations to serve suburban communities. In situations where there were mutually exclusive applications, one in the large community, one in a smaller community, the applicant for the smaller community often withdrew the application on loss of the 307(b) preference (since the proposed station *did* have some coverage of the larger community).

The FCC decided to abolish these policies. They listed several reasons. First, the FCC

acknowledged that misrepresentations may occur in the application process. An applicant may apply for one community to gain a 307(b) preference while intending to serve another community. However, existing statutory and regulatory provisions provided adequate deterrent to lack of candor in dealings with the FCC. Second, as some had commented, the policies may indeed reduce the number of stations serving suburban communities. Finally, the FCC stated that changes in the industry (the significant increase in the number of stations) since the adoption of the policies made the policies obsolete. It appears they were stating the economics would take care of the problem. It may be more economically desirable for a station to be a "big fish in a small pond" by serving the small community instead of being the one of many attempting to survive economically by serving the larger community. Since the main studio rule was still present, the FCC stated "We fail to see the deleterious effect on the public living in small communities from our authorization of a station that designates the small community as its community of license, locates its main studio in that community, fashions a programming proposal to meet the needs and interests of the smaller community, and then also competes in the larger metropolitan area that includes the community of license."

## The Arizona Waiver

In 1970, the FCC granted a waiver of 47 CFR 73.210(a)(3) to KXTC in Glendale Arizona. [25 FCC 837 (1970)] KXTC had proposed a main studio in its city of license (Glendale), but wished to originate its recorded music programming from its transmitter site in downtown Phoenix. 47 CFR 73.210(a)(2) (as shown at 28 FR 13632 (1963)) required a station's main studio to be *either* in the city of license or at its transmitter site. 47 CFR 73.210(a)(3) required a station to originate a majority of its programming (or 2/3 of its non-network programming, whichever was smaller) from its main studio or from other studios or points in the community of license. Further, 47 CFR 73.257(b)(5) required specific FCC authority to move an FM main studio to a different city than that listed on its license. This contrasts with the rules for AM stations, which allowed a main studio move within the city or to the transmitter without specific FCC authority. Summarizing, it looks like, at the time, either an AM or an FM station could locate its main studio in the city of license or at its transmitter, but AM stations could do it without specific FCC authorization. FM stations required specific authorization.

The need for the waiver at all seems (to me) questionable under the rules existing at that time. It appears that the rules allowed either an AM or FM station to have its main studio at the transmitter site, regardless of the location of that transmitter site. FM stations required specific authority to move the main studio to the transmitter site, but it does appear that FM stations could not be prohibited from having their main studio at the transmitter site. Thus, if KXTC indeed served its city of license (Glendale) but originated its programming from the transmitter site in Phoenix, all should be well. However, KXTC proposed a main studio in its city of license, then proposed to not originate the majority of

its programming from that main studio, or other locations in the city of license. Thus, the need for the waiver of the program origination requirement. The station was proposing that 68% of its broadcast week be devoted to entertainment programming consisting of recorded music (and originating from the transmitter site in Phoenix), while the remaining 32% would consist of news, public affairs, and other non-entertainment programming (originating from its studio in Glendale). The FCC commented "the 50% program origination requirement is merely a means of assuring that a station serves the local needs and interests of its community. It is clear, however, that this end is not always achieved by the rigid application of a fixed minimal percentage requirement, without considering the nature of the programming involved. As long as a studio is maintained in the community of license for the purpose of presenting local news and agricultural reports, discussions of local public affairs, public service programs, local religious programs, local talent, or similar type programming of a local nature, it appears unrealistic and unreasonable to require that a majority of all of the station's programs originate from such studio, when, in fact, a majority of the station's programs consist of recorded music." "We believe that the location from which KXTC originates its recorded music programs is irrelevant to the public interest and will not affect the station's primary responsibility of serving its assigned community. On the other hand, we are not convinced that this responsibility can be fully met by KXTC presenting only its local news and/or public affairs programming from the Glendale studio. A studio should be maintained in Glendale which is not only convenient and accessible to residents of the community and those who actually participate in programs, but one which by the nature, and to a certain degree the amount, of programming originating therefrom tends to establish the station, in the eyes of the community, as one serving its particular needs and interests." The FCC's grant of the waiver prompted a petition for reconsideration. The reconsideration was denied in 1971. [27 FCC 2d 283 (1971)]

In 1970, the FCC proposed modifying the FM (and TV) main studio rules to disallow location of the main studio at the transmitter site without prior FCC authorization. [35 FR 15304 (1970)]. "We [also] propose to amend the FM main studio rules, which were originally patterned after the corresponding AM rules (section 73.30) to conform instead with those governing TV main studio relocations, which require specific authority for moving a main studio outside the community of license, whether that be at the antenna site or elsewhere. From a propagation standpoint, the FM and TV broadcast services are very similar. Experience gained over the past 10 years with AM, FM, and TV main studio relocation problems, particularly those concerning main studio accessibility and de facto station relocation, convinces us that it is desirable not to permit either FM or TV main studio relocation outside the community of license without our consideration and grant of a formal application establishing that this location does not defeat the intent and purposes of the main studio rule." "The main studio rules are intended to make broadcast stations readily accessible to the people in the community which they are primarily licensed to serve, and they constitute one of the essential ways that the Commission has for insuring

that stations realistically meet their obligation to serve their communities of license as outlets for local self-expression." "... location of a station's main studio outside the community of license is sufficient, in our judgement, to raise a question as to whether the station can in fact meet its obligations to the community of license." "We feel, however, that an exception should continue to be made to permit AM main studio relocation at a transmitter site outside the community of license without specific authority. Because of technical considerations governing AM transmitter site selection, AM transmitter sites are usually in open countryside, in close proximity to the community of license. This allows for studio relocation at the transmitter without raising questions of studio accessibility or de facto relocation, and we have had no significant problems in this regard." These rule amendments were adopted in 1971. [27 FCC 2d 851 (1971)] Based on comments received in the proceeding, the FCC exempted FM stations moving their main studio to the transmitter site of a commonly owned AM *serving the same community* from the prior approval requirement. The Commission would permit a main studio outside the principal community "where an adequate showing is made that good cause exists... and that to do so would be consistent with the operation of the station in the public interest..." Prior to this rulemaking, FM stations were specifically authorized to locate their main studios at their transmitter sites, though a move of the main studio to such a site, outside the community of license, required FCC approval. With this rulemaking, no specific authorization was made for FM stations locating their main studio at a transmitter site outside the community of license. This rule would have disallowed the KXTC proposal (above) without the waiver.

## Which studio is the *main* studio?

In 1973, the FCC discovered that WCTV (TV) was originating 31 percent of its programming from its main studio in the city of license while originating the remainder of the non-network programming from another studio outside the city of license. Prior to 1979, TV stations did not have the same local origination requirement as radio in the rules (though similar requirements were developed through cases interpreting the main studio rule). Therefore, besides looking at where the majority of programming originated, the FCC found that the main studio had 12 employees while the other had 64 employees. Further, the studio outside the city of license had more up-to-date equipment than the main studio. Therefore, the FCC declared that the studio outside the city of license was the main studio, and was thus in violation of the main studio rule.

In 1979, the FCC was conducting a review of its broadcast rules. As part of this review, they combined the AM, FM, and TV main studio rules into a new section applicable to all broadcast stations. [44 FR 69933 (1979)] They also modified the program origination requirements for network affiliated stations. These stations had previously been required to originate 50% of their total programming or 2/3 of their non-network programming, whichever was smaller, from the main studio or other locations within the community of license. With this rule change the rule was simplified to require the origination of 50% of

the non-network programming from the community of license.

In 1984, the FCC *continued* to have problems with stations not locating their main studio where specified by the Rules. They issued a Reiteration of Policy Regarding Enforcement of Main Studio Rule [55 RR 2d 1178 (1984)] advising stations that program test authority would not be granted (or would be revoked for stations receiving automatic PTA) for stations not complying with the main studio rule.

## Current Main Studio Rule Adpoted

In 1986 the FCC further relaxed the main studio rule. [51 FR 41360 (1986), 1 FCC Rcd 536 (1986), 2 FCC Rcd 3215 (1987), 52 FR 28825 (1987), 3 FCC Rcd 5024 (1988), 53 FR 32889 (1988)] In response to a petition from the "Arizon Justice Committee" (a committee formed in response to the Arizona Waiver), the FCC proposed eliminating the program origination requirement (which generally required 50% of a station's non-network programs originate in the community of license) and allowing a station to place its main studio outside the community of license as long as it remained within the station's city grade coverage area. As an alternative, they proposed eliminating the main studio rule altogether. Another possibility (that suggested by Arizona Justice Committee) was that the main studio requirement be replaced with a requirement that a station maintain an office in the community of license.

In the NPRM, the Commission justified the relaxation of the rules based on their lack of relevance to current regulatory policies and station operations. They reasoned that technical advances allowed the production of programs anywhere for transmission to a station. It was also uncertain as to whether the presence of a main studio in the community of license actually increased the communication between a station and its audience (listeners would probably contact a station by phone instead of dropping in). There were, they said, substantial licensee compliance costs associated with maintaining a main studio in the community of license. Finally, the FCC expected stations to continue to serve their audiences without intrusive programming-related rules.

In the Report and Order [2 FCC Rcd 3215 (1987)], the FCC changed the main studio rule to allow the main studio to be located anywhere within the station's principal community contour (or at the transmitter site of a co-owned AM licensed to the same community), removed the program origination requirement and removed the provision for dual city licensing. They did, however, continue to require the Public Inspection File be located within the community of license though a limited stay of the Public Inspection File location requirement was issued later, permitting stations that already had their Public Inspection File located at their AM transmitter main studio to continue to do so. [52 FR 28825 (1987)] They recognized that use of the principal community contour "may afford some licensees greater flexibility than others." They went on to state, "We believe, however, that

its use best balances our objectives. It ensures that the main studio is located in the primary reception area of the station, and will permit collocation of the main studio and the transmitter in all cases." To assure that the public could readily contact the station, the new rules required the station to maintain a local phone number in the community of license, or a toll-free number.

Seven petitions for reconsideration and/or clarification were filed in response to the rule change. [53 FR 32889 (1988), 3 FCC Rcd 5024 (1988)] These petitions questioned the Public Inspection File location requirement, the local or toll-free phone number requirement, the definition of the term "main studio" without a program origination requirement, the application of the main studio rule to non-commercial educational (NCE) stations, whether the FCC should modify the main studio location requirements they just adopted, and whether clarification of the principal community contour was required.

The Commission was unconvinced that the accessibility requirements for the main studio and the Public Inspection File should be the same. They maintained that even if a station has a main studio within the principal community contour but outside the community of license, the Public Inspection File must be located within the community of license, except those stations previously permitted to maintain their Public Inspection File at their main studio outside the community of license (generally AM stations with the studio at the transmitter). Further, they believed the local or toll-free phone number requirement was necessary to allow adequate communications between the community and the station.

## Main Studio Definition

In response to requests for a definition of a main studio, the FCC responded, "A station must maintain a main studio which has the capability adequately to meet its functions... of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous transmission capability, and maintain a meaningful management and staff presence." "The term "main studio" continues to designate a broadcast station's only studio when no auxiliary studio is maintained. If a station has two or more studios that meet the applicable criteria, it may select one (within its community contour) to designate as its main studio." The term "meaningful management and staff presence" turns out to be defined a bit more precisely in the near future.

Some petitioners said the new main studio requirements should not be applied to NCE stations. The FCC said, "we have recognized the benefits of centralized operations for noncommercial education stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate "satellite" stations that do not necessarily meet the requirements of a main studio." The FCC decided that existing waivers would continue to be effective. These stations

would, however, be required to comply with the new local toll-free telephone number requirement. I imagine many commercial stations also believe they have limited funding, perhaps qualifying them for such a waiver. A recent email from FCC staff said "With respect to waivers, well, they're very hard indeed to come by in the commercial context... Commercial broadcasters must show that there are no sites available in the principal community contour where they can be located, and must show public interest considerations for waiver. It's a pretty high standard."

Some petitioners argued that higher power stations had more flexibility in main studio location than lower power stations. This is, in fact, the main issue of the *current* rulemaking. However, in 1988 the FCC said, "we recognized that the principal community contour standard would afford some licensees greater flexibility than others. We adopted that contour standard, nevertheless, because its use best balances our objectives... It will permit co-location of the main studio and transmitter in all cases, while at the same time ensuring that the main studio is located in the primary reception area of the station."

The FCC also clarified how the principal community contour was to be determined for main studio location purposes. FM and TV stations *must* use predicted contours. AM stations may use either predicted or measured contours.

## Meaningful Management and Staff Presence

Jones Eastern of the Outer Banks, Inc. (WRSF(FM)) got the FCC to define the management and staff presence requirement, though it cost them a fine. [6 FCC Rcd 3615 (1991)] WRSF maintained a studio outside the principal community contour and another within the contour (the main studio). With a total station staff of about 20, the main studio was staffed by a full-time "office manager". In addition, the business manager spent four hours per week at the main studio, the general manager spent two hours per week there, and the senior account executive spent some time there. The FCC stated, "In our 1988 clarification, we did not formulate a "bright line" test to define a "meaningful presence." We find, however, that a staffing situation like the one Jones Eastern proposes renders the Commission's concept of a main studio virtually meaningless." "We find that a main studio must, at a minimum, maintain full-time managerial and full-time staff personnel." "This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered "meaningful.""

## Who's Management?

In 1992, the FCC declared who qualifies as management for the main studio staffing requirement. [7 FCC Rcd 6800 (1992)] These positions include: President or other

corporate officer, general manager, station manager, program director, sales manager, chief engineer with managerial duties, news director, personnel manager, facilities manager, operations manager, production manager, promotion director, research director, controller, and chief accountant. They further stated that "... we would not, of course, require management personnel to remain "chained to their desks" during normal business hours. Rather, we require that management personnel report to work at the main studio on a daily basis, spend a substantial amount of time there, and, unlike Jones Eastern's "ghost management," use the studio as a "home base."

## A Moving Target?

WRSF was fined \$20,000 for its violation of the main studio rule. [7 FCC Rcd 7309 (1992)] In a dissenting statement, Commissioner Quello said, "... It seems bad form for the Commission to double the fine while simultaneously granting the licensee's petition for clarification of the rule, apparently agreeing that the requirement of a "meaningful management and staff presence" was not adequately defined." However, since the US Court of Appeals had set aside the FCC's forfeiture standards, the FCC reconsidered the fine in 1995, reducing it to \$12,000. [10 FCC Rcd 3759 (1995)] Once again, Commissioner Quello issued a dissenting statement clearly presenting the history of the case. He also states, "I fail to see how a stiff fine is justified where the very rule the licensee is charged with violating was twice clarified at various stages of this case. The old adage "a moving target is harder to hit" should not apply to government regulation. Unluckily, Jones Eastern has learned the hard way that the vagaries of imprecision apply to many things in life, including in this case the main studio rule."

## Unattended Operation

In 1995, the FCC adopted rules permitting the unattended operation of broadcast transmitters. [FCC MM Docket 94-130 (1995)] Although this would appear to permit the operation of a station with full automation, several FCC staff members pointed out that the staffing requirements of the main studio rule (or FCC policy based on that rule) required minimum staffing levels at the main studio during "normal business hours". Thus, it appeared, true unattended station operation during normal business hours was not possible. Staff was expected to be present at the main studio, though they need not be "operating" the main transmitter. This interpretation, however, seems to disagree with footnote 11 of 7 FCC Rcd 6800 (1992) which states, "We are fully aware, as NAB demonstrates, that a significant body of stations have only a limited number of employees. For example, 5.8% (approximately 640) of all radio stations are said to have two or fewer employees, while 18.7% (approximately 2060) have four or fewer. Unlike WRSF, stations of this size will generally not have more than one studio. In such circumstances, where the employees report to work to the main studio, we have no intention of limiting their ability to leave the



studio to conduct station business." Recent email from FCC staff says, "As far as a one-person 24-hour station goes, I agree with you that footnote 11 appears to condone such operation. Might not be a bad idea to check with Mr. Kelley [Chief of Mass Media Bureau's Enforcement Division] before suggesting to too many people to go to fully automatic operation." Repeated email requests for comment went unanswered. I did get a chance to ask Mr. Kelley about the main studio rule and unattended operation at this year's NAB convention. He told me that a proposed rulemaking regarding the main studio rule was in the works. However, now that the NPRM is released, we find no discussion of unattended operation and staffing levels.

## What Now?

As mentioned in the last article in this series, the FCC is once again looking at modifying the main studio rule. The discussion is largely the same as it has been through the years. Now, the FCC is indicating that the same accessibility requirements should be in place for the main studio and the Public Inspection File (as opposed to their position in 1988). For main studio location, they now propose use of the principal community contour of *any* station licensed to the same community, or, perhaps, a certain number of miles from some reference point in the community. This, of course, has the possibility of placing the main studio far from where *any* of the station's listeners are located. Finally, the FCC realizes that some of the rules regarding the contents of the Public Inspection File are out of date and should be revised.

Over the years, various parties have pointed to the progress of technology as a reason for modifying the basic requirement that a station maintain a main studio where its listeners are (whether in the community of license or within the larger coverage area). It appears, however, that since nearly the beginning of radio, the capability of originating programs remotely has been present. Changes in technology don't *seem* to justify a change in policy regarding studio location.

The broadcast industry has certainly changed. There are certainly far more stations on the air today than when these rules were first put in place or last revised. This increase in the number of stations *may* remove the requirement that the government enforce a requirement that stations serve their licensed communities through such a rule. It is unlikely that removal of the main studio rule would put us back to the position of 1926 where the vast majority of stations were immediately surrounding large cities. We may, however, find stations "abandoning" their suburban communities by concentrating their programming on nearby larger communities. For example, a quick analysis of stations here in San Luis Obispo County shows that about 30% of the stations in the county have main studios in a city other than that they are licensed to. Most of these have moved their main studio to the largest city in the county. Most moves were also done through the new multiple ownership rules. Are these stations serving the particular needs of the communities they are licensed

to? Are there particular needs that are separate from the larger community (for example, the county)?

FCC policy has changed over the years. The Commission now uses market forces in many cases where regulation was previously used. This may be justified by the increase in the number of stations, or may just be the changing times. Are market forces adequate to insure the needs of communities are served by stations licensed to them (or perhaps stations licensed to other communities)? Looking at the newspaper industry, no rules require a newspaper to maintain an office in a particular community if they want circulation in that community. Newspapers often maintain offices in smaller communities to sell advertising and support local reporters. These larger papers then have local editions which are the same as the larger community paper plus a local insert (with appropriate news and advertising). Could such a market approach achieve adequate (or perhaps better) service to the various communities than the main studio rule?

Finally, while the proposed changes expanding the area where a station may have its main studio certainly benefits stations (either allowing them to use lower cost locations for the studio, share studio space with stations licensed to other communities, or, perhaps, allowing them to more fully abandon the smaller communities and serve the more lucrative larger communities). What benefit is there to the public? How would this compare with merely eliminating the main studio rule and allowing the market to determine where the main studio is located?

Get those comments in! Check our web pages or fax server for more information!

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